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10 UNITED STATES DISTRICT COURT
11 DISTRICT OF NEVADA, NORTHERN DIVISION
12

13 RYAN E. UHLMAYER, an Individual,
14 Plaintiff,
15 vs.

CASE NO. 3:19-cv-00438-LRH-CLB

**STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

16 USAA CASUALTY INSURANCE
17 COMPANY, a Texas Corporation; UNITED
SERVICES AUTOMOBILE ASSOCIATION,
18 an Unincorporated Association; DOES I-
XXX, and ABC CORPORATIONS A-Z,
19 inclusive,
20 Defendants.

21
22 In order to protect the confidentiality of certain information obtained by the parties herein,
23 Plaintiff RYAN E. UHLMAYER, and Defendants USAA CASUALTY INSURANCE COMPANY
24 ("USAA CIC") and UNITED SERVICES AUTOMOBILE ASSOCIATION ("USAA")¹
25

26 ¹ United Services Automobile Association ("USAA") is not a proper party to this litigation as it
27 did not issue either of the insurance policies at issue in this case. To that end, USAA has filed a
28 Motion to Dismiss [ECF No. 6], currently pending with the Court. In participating in this
Protective Order, USAA does not waive or abandon its position that it is an improper party to this
(footnote continued)

1 (collectively, “Defendants”), hereby enter the following Stipulated Confidentiality Agreement and
2 Protective Order (“Protective Order”):

3 1. This Stipulated Confidentiality Agreement and Protective Order (“Protective
4 Order”) shall govern the use and treatment of information, documents, testimony or other tangible
5 things produced in this action by any party hereto, as well as discovery and document production
6 from third parties, in the above-referenced action. The nature of this Protective Order is to protect
7 defendants USAA CIC and USAA’s respective member and business interests in its own
8 intellectual property, information, and processes. The insurance, banking, and investment
9 industries are highly competitive markets, and disclosure of Defendants’ trade secrets, confidential
10 or proprietary information could cause irreparable and significant harm to the Defendants and their
11 members. This Protective Order is intended to prevent this foreseeable harm and any related
12 unforeseeable harm.

13 2. As used in this Protective Order, the terms “Party” or “Parties” shall include the
14 Plaintiff Ryan E. Uhlmeier and the Defendants USAA and USAA CIC, an each of their
15 employees, agents, representatives, and attorneys (including both outside counsel and inside
16 counsel).

17 3. As used in this Protective Order, the term “Person(s)” shall include any “Party” or
18 non-party to this action, whether an individual, corporation, partnership, company, unincorporated
19 association, governmental agency, or other business or governmental entity.

20 4. As used in this Protective Order, the term “Confidential Material” or “Confidential
21 Document” shall refer to any and all documents or other materials produced in response to
22 Requests for Production of Documents as well as any confidential or proprietary documents, data,
23 or any information or documents provided in response to other written discovery requests,
24

25 litigation and all causes of action brought against it should be dismissed. USAA also does not
26 waive its right to object to discovery request, interrogatories, depositions, or any other discovery
27 conducted by Plaintiff. USAA will remain a party to this Protective Order and will continue as
28 such throughout this litigation until such time that all claims asserted against it in this litigation are
terminated of claims brought against it in this litigation.

1 interrogatory answers or deposition testimony, that contains: (1) information which any party or
2 non-party believes in good faith to be a trade secret, proprietary information or confidential
3 research, development, commercial, or other proprietary business information within the meaning
4 of Fed. R. Civ. P. 26(c)(1)(G); and (2) documents and/or testimony that may reveal confidential,
5 proprietary, personal, or commercially sensitive information. Such Confidential Material may be
6 contained in any written, printed, recorded, or graphic matter of any kind and shall retain its
7 confidential designation regardless of the medium on which it is produced, reproduced, or stored.
8 Confidential Material includes all documents or information derived from Confidential Material,
9 including excerpts, copies or summaries of Confidential Material. Any party or non-party may
10 designate as Confidential Material (including interrogatory answers) any information or document
11 or other items with a watermark or legend as indicated in paragraphs 8 or 9 below.

12 5. As used in this Protective Order, the term "Discovering Party" shall mean the Party
13 who has requested the production of documents, information, testimony or other material
14 designated as Confidential Material under this Protective Order.

15 6. As used in this Protective Order, the term "Producing Party" shall mean the Party
16 who has produced documents designated as Confidential Material under this Protective Order.

17 7. It is the purpose of this Protective Order that Defendants will be provided reasonable
18 assurance that:

19 (a) The documents produced by the Defendants, whether jointly or individually,
20 will be used solely and exclusively for the purpose of this specific litigation only and for no other
21 purpose;

22 (b) The documents produce by the Defendants, whether jointly or individually,
23 will not be used for commercial purposes, including but without limitation, any business,
24 competitive or educational purpose;

25 (c) The documents produced by the Defendants, whether jointly or individually,
26 will not be used for any non-litigation purposes; and

27 (d) Such information shall not be disclosed or disseminated to any person,
28 organization, business, governmental body or administrative agency unless ordered by the Court.

1 Defendants are relying on this Protective Order, and would not have produced the
2 documents and information otherwise. Defendants' production under this Protective Order does
3 not admit or concede the documents or information are relevant or admissible in this litigation.

4 8. Any party or non-party may designate information contained in a document as
5 Confidential Material, the designating party shall mark each page of the document with the word
6 "CONFIDENTIAL" and identify such Confidential Material at the time of production.
7 Confidential Information may be used in the course of depositions in accordance with this
8 Protective Order. Where a document or response consists of more than one page, the first page and
9 each page on which Confidential Material appears shall be so designated.

10 9. Defendants may designate any information, document, testimony or other tangible
11 thing disclosed during a deposition, in response to written discovery, or otherwise in connection
12 with this litigation as Confidential Material by so indicating in said response, or on the record at the
13 deposition and requesting the preparation of a separate transcript of such material. Documents
14 may be designated Confidential Material by affixing the legend "CONFIDENTIAL" to each item
15 or document page. Deposition testimony and/or exhibits may be designated Confidential Material
16 either by: (a) stating on the record of the deposition that such deposition, or portion thereof, or
17 exhibit is confidential; or (b) stating in writing served upon counsel of record within thirty (30)
18 days after receipt of the deposition transcript and exhibits that such deposition, or portion thereof,
19 or exhibit is confidential. Transcripts and exhibits from any deposition or hearing shall be
20 temporarily designated as Confidential Material and be treated as subject to the terms of this
21 Protective Order, until counsel for Defendants notifies all other parties of the pages of the
22 transcripts or exhibits which shall remain designated as Confidential Material. If no designation is
23 made within thirty (30) days, the entire transcript and all exhibits will be deemed not confidential.
24 Any other party may object to such proposal, in writing or on the record. Upon such objection, the
25 parties shall follow the procedures described in paragraph 10 below. After any designation made
26 according to the procedure set forth in this paragraph, the designated documents or information
27 shall be treated according to the Confidential designation until the matter is resolved according to
28 the procedures described in paragraph 10 below, and counsel for all parties shall be responsible for

1 making all previously unmarked copies of the designated material in their possession or control
2 with the specified designation.

3 10. Except with the prior written consent of other parties, or upon prior order of this
4 Court obtained upon notice to opposing counsel, Confidential Material may only be copied,
5 disclosed, discussed, or inspected, in whole or in part, only for the purposes of this litigation only
6 by the following persons and shall not be disclosed to any person other than:

7 (a) counsel of record for the respective parties to this litigation, in-house counsel
8 and co-counsel retained for this litigation;

9 (b) personnel who are directly employed or contracted by the attorneys in (a)
10 above or their respective firms and who are assisting the attorneys working on this action;

11 (c) any officer or employee of a party, to the extent deemed necessary by
12 Counsel for the prosecution or defense of this litigation;

13 (d) consultants or expert witnesses retained for the prosecution or defense of this
14 litigation, provided that each such person is provided with a copy of this Protective Order and shall
15 agree in writing to be bound thereto by executing a copy of the Acknowledgement annexed to this
16 Order as Exhibit "A" (which shall be retained by counsel to the party so disclosing the Confidential
17 Material and made available for inspection by opposing counsel during the pendency or after the
18 termination of the action only upon good cause shown and upon order of the Court) before being
19 shown or given any Confidential Material;

20 (e) any authors or recipients of the Confidential Material;

21 (f) any person who is expected to testify as a witness either at a deposition or
22 court proceeding in this action for the purpose of assisting in his/her preparation therefore, and any
23 other person to whom the dissemination of the document is deemed necessary by any party in
24 preparation for trial (other than persons described in paragraph 4(e)). A witness shall be provided
25 with a copy of this Protective Order to review and shall sign the Acknowledgement annexed hereto
26 before being shown or given access to Confidential Material. Confidential Material may be
27 disclosed to a witness who will not sign the Acknowledgement only in a deposition at which the
28 party who designated the Confidential Material is represented or has been given notice that

1 Confidential Material shall be designated "Confidential" pursuant to paragraph 2 above. Witnesses
2 shown Confidential Material shall not be allowed to retain copies in any form; and

3 (g) the United States District Court for the Unofficial Northern District of
4 Nevada (the "Court"), Court personnel, including court reporters engaged in such proceedings as
5 are necessarily incidental to the preparation or trial of this lawsuit;

6 (h) any mediator or arbitrator selected with the consent of all parties or by the
7 Court.

8 11. Any persons receiving Confidential Material shall not reveal or discuss such
9 information to or with any person who is not entitled to receive such information, except as set
10 forth herein.

11 12. Any designating party may elect to designate certain Confidential Material of a
12 highly confidential and/or proprietary nature as "HIGHLY CONFIDENTIAL-ATTORNEYS
13 EYES ONLY" (hereinafter "Attorney's Eyes Only Material"), in the manner described in
14 paragraphs 8 and 9 above. Attorney's Eyes Only Material, and the information contained therein,
15 may be disclosed to only those persons described in subparagraphs 10(a), (d), and (g)-(h) above,
16 and shall not be disclosed to a party, or to an officer, director or employee of a party, unless
17 otherwise agreed or ordered. If disclosure of Attorney's Eyes Only Material is made pursuant to
18 this paragraph, all other provisions in this order with respect to confidentiality shall also apply. If a
19 party objects to materials designated "Highly Confidential-Attorneys & Experts Only," the
20 objecting party may follow the procedure set forth in paragraph 16 herein to remove such
21 designation.

22 13. Prior to filing any document identified as Confidential Material, the party that
23 intends to file with the Court pleadings or other papers containing or referring to Confidential
24 Material shall notify the designating party at least ten (10) days prior to filing the designated
25 document. The designating party will then make a good faith determination whether the
26 document(s) meet the standard for sealing as set forth in the Ninth Circuit's directives in *Kamakana*
27 *v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006). To the extent the designating party
28 does not believe the relevant standard for sealing can be met, it shall indicate that the document

1 may be filed publicly no later than seven (7) days after receiving notice of the intended filing. To
2 the extent the designating party believes the relevant standard for sealing can be met, it shall
3 provide a declaration supporting that assertion no later than seven (7) days after receiving notice of
4 the intended filing. The filing party shall take all reasonable steps to file documents as
5 “Confidential” under seal and attach the declaration of the designating party to its motion to seal
6 the designated material. If the designating party fails to provide such a declaration in support of the
7 motion to seal, the filing party shall file a motion to seal so indicating and the Court may order the
8 document filed in the public record.

9 In the event of an emergency motion, the above procedures shall not apply. Instead, the
10 movant shall file a motion to seal and the designating party shall file a declaration in support of that
11 motion to seal within three (3) days of its filing. If the designating party fails to timely file such a
12 declaration, the Court may order the document filed in the public record.

13 14. Any party filing Confidential Material or motions to seal shall comply with this
14 Protective Order and LR 10-5.

15 15. A party may designate as Confidential Material documents or discovery materials
16 produced by a non-party by providing written notice to all parties of the relevant document
17 numbers or other identification within thirty (30) days after receiving such documents or discovery
18 materials. Any party or non-party may voluntarily disclose to others without restriction any
19 information designated by that party or non-party as Confidential Material, although a document
20 may lose its protected status if it is made public.

21 16. If any Party disagrees with the designation of materials marked “Confidential” or
22 “Highly Confidential-Attorneys Eyes Only”, the objecting party shall within five (5) days of receipt
23 of the materials, provide written notice of the disagreement to the Defendants, requesting a meeting
24 to confer with counsel for Defendants to resolve the dispute over the designation. If the dispute
25 over the designation is not resolved informally between the parties, Defendants will file a motion
26 with the Court to resolve the dispute regarding the “Confidential” or “Highly Confidential-
27 Attorneys Eyes Only” designation. Defendants will have 30 days from the date in which the parties
28 meet and confer regarding the dispute over the designation, in which to file a motion with the court

1 regarding the designation. In any event, unless and until a Court ruling is obtained changing a
2 designation, or the designating party agrees otherwise in writing, the material involved shall be
3 treated according to the existing Confidential Material designation.

4 17. Notwithstanding any challenge to the designation of material as Confidential
5 Material, all documents shall be treated as Confidential and shall be subject to the provisions hereof
6 unless and until one of the following occurs:

7 (a) the party or non-party claims that the material is Confidential Material
8 withdraws such designation in writing; or

9 (b) the party or non-party who claims that the material is Confidential Material
10 fails to apply to the Court for an order designating the material confidential within the time period
11 specified in paragraph 10 after receipt of a written challenge to such designation; or

12 (c) the Court rules the material is not confidential.

13 18. This Protective Order survives the end of the above-styled litigation. All provisions
14 of this Protective Order restricting the communication or use of Confidential Material shall
15 continue to be binding after the conclusion of this action, unless otherwise agreed or ordered.
16 Upon final settlement or conclusion of this action, a party in the possession of Confidential
17 Material, other than that which is contained in pleadings, correspondence, and deposition
18 transcripts (with the exception of exhibits therein), shall either:

19 (a) return such documents no later than thirty (30) days after the final settlement
20 or termination of this action to counsel for the party or non-party who provided such information,
21 or

22 (b) destroy such documents within the time period upon consent of the
23 producing party and certify in writing within thirty (30) days that the documents have been
24 destroyed.

25 The party in possession of Confidential Material shall return or destroy all Confidential
26 Material as specified above, including all copies, notes, tapes, papers and any other medium
27 containing, summarizing, excerpting, or otherwise embodying any Confidential Material. The
28 party shall be entitled to destroy, rather than return (a) any Confidential Material stored in or by

1 data processing equipment, and (b) work-product memoranda embodying Confidential Material,
2 subject to privilege under State Bar rules, and confirm in writing to the producing party its
3 compliance with this section.

4 19. The Confidential Material shall not be published or reproduced in any manner on the
5 internet, blogs, bulletin boards, email, newspapers, magazines, bulletins, or other media available
6 publicly or privately. Likewise, persons may not verbally share the Confidential Material to any
7 persons or entities not listed in subsections 10(a)-(h).

8 20. The parties agree to limit dissemination of any Confidential Material as set forth in
9 this Protective Order and are materially relying on the representations and covenants contained
10 herein.

11 21. In the event that Confidential Material is inadvertently produced without designating
12 such documents or information as "Confidential" or "Highly Confidential-Attorneys Eyes Only"
13 within the time periods established in this Protective Order, any party or nonparty shall properly
14 designate such documents or information as "Confidential" or "Highly Confidential-Attorneys
15 Eyes Only," and the parties shall be bound by such designations pursuant to the terms of this
16 Protective Order, but shall not be deemed to be in breach of this Protective Order by reason of any
17 use or disclosure of such Confidential Material that occurred prior to notification of the correct
18 designation. Inadvertent production of such documents or information in this case without
19 designation as "Confidential" or "Highly Confidential-Attorneys Eyes Only" shall not be deemed a
20 waiver, in whole or in part, of any party's claim to confidentiality of such documents or
21 information, either as to the specific information disclosed or as to any other information relating to
22 the subject matter of the information disclosed.

23 22. Confidential Material designated by Defendants shall be used only for the purposes
24 of prosecuting or defending this action. Under no circumstances shall information or materials
25 covered by this Protective Order be disclosed to or discussed with anyone other than the individuals
26 designated in paragraph 10.

27 23. The terms of this Order do not preclude, limit, restrict, or otherwise apply to the use
28 of documents at trial.

1 24. Nothing herein shall be deemed to waive any applicable privilege or work-product
2 protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material
3 protected by privilege or work product protection.

4 25. If any party receives a subpoena from a nonparty to this Protective Order seeking
5 production or other disclosure of Confidential Material, it shall refuse to produce any Confidential
6 Material under the authority of this Protective Order and shall immediately give written notice to
7 counsel for the designating party, identifying the Confidential Material sought and enclosing a copy
8 of the subpoena.

9 26. Any witness or other person, firm or entity from which discovery is sought may be
10 informed of and may obtain the protection of this Order by written advice to the parties; respective
11 counsel or by oral advice at the time of any deposition or similar proceeding.

12 27. The parties stipulate that this Court shall retain jurisdiction over them and any
13 person to whom Confidential Material is disclosed to the extent necessary to enforce the terms of
14 this Protective Order. Any party, including attorneys of record, and outside consultants and experts
15 retained in this action, who violates this Order, including but not limited to unauthorized disclosure
16 of Confidential Material or Confidential Documents, is subject to sanctions, including but not
17 limited to, dismissal of claims or defenses, civil contempt, damages, assessment of reasonable
18 expenses, including attorneys' fees incurred by the person whose Confidential Material was
19 disclosed in violation of this Order, and/or any other sanction deemed appropriate by the
20 Court. Disclosure of confidential material in violation of this order will also entitle a party to
21 recover all damages proximately flowing from the violation, including attorneys' fees expended in
22 the enforcement of this order. Upon an alleged violation of this Protective Order, the Court on its
23 own motion or on the motion of any party may grant relief as it deems appropriate in law or equity.

24 28. Should any provision of this Stipulation be struck or held invalid by a court of
25 competent jurisdiction, all remaining provisions shall remain in full force and effect.

26 29. The documents and information at issue do not involve the public health and safety,
27 a public entity, or issues important to the general public.

28 30. The terms of this Protective Order are subject to modification, extension or

1 limitation as may be hereinafter agreed to by the parties in writing or as ordered by the Court. Any
2 modifications, extensions or limitations agreed to in writing by the parties shall be deemed
3 effective pending approval by the Court.

4 31. No modifications of this Protective Order or waiver of its provisions will be binding
5 upon the parties, unless made in writing by the parties.

6 Dated this 13th day of December, 2019.

Dated this day of December, 2019.

7 LEVERTY & ASSOCIATES LAW CHTD.

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14 *Attorneys for Defendants*

USAA Casualty Insurance Company and

United Services Automobile Association

15 **ORDER**

16
17 **IT IS SO ORDERED.**

18 Dated this 17th day of December, 2019.

19
20 

21 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

**ACKNOWLEDGMENT OF RECEIPT AND AGREEMENT TO
COMPLY WITH STIPULATED CONFIDENTIALITY AGREEMENT AND
PROTECTIVE ORDER**

I, _____, have reviewed carefully the Stipulated Confidentiality Agreement And Protective Order ("Protective Order") concerning the treatment of confidential or proprietary information, or other commercially sensitive or personally sensitive information of a non-public nature ("Confidential Material") executed by the parties in the above-captioned case, and its significance has been explained to me by counsel. I agree to be bound by the terms of the Protective Order, and to treat as confidential and not to disclose Confidential Material to any person who is not authorized to receive that information under the Protected Order. I hereby consent to the jurisdiction of that Court for the purposes of enforcing that Protective Order.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE

PRINTED NAME

ADDRESS

TELEPHONE NUMBER

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b) and Section IV of the District of Nevada Electronic Filing Procedures, I hereby certify that on the 13th day of December, 2019, I caused to be served a true and correct copy of the foregoing **STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER** in *Ryan E. Uhlmeier v. USAA Casualty Insurance Company et al.*, United States District Court Case No. 3:19-cv-00438-LRH-CBC, to be served via electronic service by the U.S. District Court CM/ECF system to the parties on the Electronic Filing System.

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